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**Article:**

Son, S.A. [orcid.org/0000-0002-3045-7939](https://orcid.org/0000-0002-3045-7939) (2020) Chasing justice : victim engagement with accountability for human rights abuses in North Korea. Asian Studies Review. ISSN 1035-7823

<https://doi.org/10.1080/10357823.2020.1734536>

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This is an Accepted Manuscript of an article published by Taylor & Francis in Asian Studies Review on 26th March 2020, available online:  
<http://www.tandfonline.com/10.1080/10357823.2020.1734536>.

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# **Chasing Justice: Victim engagement with accountability for human rights abuses in North Korea**

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## **Abstract**

This article considers the question of accountability for human rights abuses alleged to have been committed in North Korea, via a possible future process of transitional justice. It focuses on the efforts of South Korean nongovernmental organisations that have worked for over two decades to document reported abuses and, more recently, to consider how perpetrators of those abuses may be held accountable. While noting the significance of this work, the article draws on research focused on the efficacy of transitional justice from the victim perspective, to learn more about how those who may identify as victims of the North Korean regime perceive the possible methods for redress and both individual and collective recovery from abuses. The article engages with some preliminary research done with self-identifying victims of the North Korean regime and assesses some of the weaknesses in current South Korean civil society practice involving North Korean escapees. It highlights challenges to pursuing an alternative approach that places victims at the centre and provides some recommendations for how NGOs might develop and pilot new approaches to planning for and implementing a transitional justice process in North Korea if the opportunity arises.

## **Keywords**

North Korea; South Korea; victims; transitional justice; escapees; accountability; human rights; crimes against humanity; witnesses

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## **Introduction**

Since the mid-1990s, human rights organisations in South Korea and abroad have worked diligently to raise awareness about the abuses taking place in the Democratic People's Republic of Korea (North Korea). In 2014, a report by the United Nations Commission of Inquiry on human rights in North Korea (UN COI) called for practical approaches for dealing with alleged crimes against humanity, through a greater focus on accountability. Specifically, the report's recommendation that members of the North Korean leadership, including Kim Jong Un, be referred to the International Criminal Court (ICC), drew global attention. The UN COI (2014,

p. 369) also called for the launch of “a people-driven process to establish the truth about the violations”, while one of the commissioners, Marzuki Darusmann, told a Seoul press conference, “It is now time to consider the concrete measures that should be taken to ensure accountability for those crimes and to set up a broader process of transitional justice” (UN OHCHR, 2015).

This article considers the subsequent effort within South Korean and international human rights organisations to address the question of accountability for human rights abuses in North Korea, potentially through some form of transitional justice process in the future. Transitional justice is defined as a set of practices, mechanisms and concerns that arise following a period of conflict or repression, aimed directly at confronting and dealing with past violations of human rights and humanitarian law (Roht-Arriaza & Mariezcurrena, 2006, p. 2). While noting the important work that has been done to explore what accountability via top-down, legal mechanisms might mean in a North Korea transitioning away from authoritarianism, this article draws on research focused on the efficacy of transitional justice from the victim perspective. Specifically, it assesses the aims and outcomes of engagement with the population of North Korean escapees in South Korea as it relates to the pursuit of accountability.

The UN COI inspired more concerted efforts on human rights record-creation and accountability strategy formation than had existed in the past. Developments included increased focus given to North Korean human rights on the agendas of various UN bodies; the establishment of a United Nations human rights office in Seoul; South Korea’s passing of a North Korean human rights act; and sustained advocacy by NGOs. Furthermore, although not an entirely new concept in the Korean context (Hong, 2010), the range of scholarship on transitional justice has broadened as a result of the COI’s recommendations (Baek & Lee, 2017; Baek & Teitel, 2015; Cho, 2014; Hong, 2017; H. J. Kim, 2017; Kim, Cho & Baek, 2014). The grounds for much of this commentary is a view of North Korean human rights abuses through a legal lens, focussed on the position of “humanity” as a constituency of international criminal justice, not just the North Koreans who have experienced first-hand abuses by the state. The atrocities against which international criminal justice is directed are thus seen as “global crimes”, collectivised in their impact and therefore of concern to all humanity (Findlay, 2009, p. 190).

These developments also prompted human rights groups in South Korea to begin thinking about their documentation work beyond the collection and publication of escapee testimonies for awareness-raising, towards altering their data collection methods to amass the type of data that could support a future criminal justice process (Son, Bielefeld, Oh, Stevens, & Lee, 2017). Consequently, over the past several years, the UN human rights office in Seoul and other organisations have brought legal experts to South Korea to assess documentation practices and provide guidance to improve the quality of what is stored. Most recently, UN Human Rights Council resolution 34/24 mandated the Seoul UN human rights office to “establish a central information and evidence repository; and have experts in criminal justice assess all information and testimonies with a view to developing possible strategies to be used in any future accountability process” (Human Rights Council, 2019, para. 10).

Yet the scope of transitional justice is not limited to criminal justice. It involves different mechanisms designed to address the multifaceted aspects of individual and collective recovery from conflict or oppression. These mechanisms may include truth-seeking initiatives, memorialisation and educational programmes, financial reparations, and other grassroots and government-led activities to support the recovery of victims, institutionalise peace and

democracy and re-build society. Whether a fundamental transition occurs in North Korea via unification with the South or independently, a range of locally embedded social dynamics will shape institutional processes for investigating North Korea's history and forming a vision for the future that defines new parameters of national belonging. The experience of grave human rights abuses will be a crucial part of the North Korean people's identity, demanding comprehensive, transformational redress. Yet in the flurry of academic and civil society discourse that arose on transitional justice following the COI, the agency of abuse survivors in planning for future mechanisms of redress has been largely overlooked.

This article draws on research on the efficacy of transitional justice from the victim perspective to evaluate current efforts to pursue accountability and means of engagement with victim constituencies. It begins by highlighting contributions from the global scholarship and practitioner guidance on victim participation in designing and leading transitional justice processes. It then considers how organisations working on this issue have engaged with former residents of North Korea to support the push for accountability. The article assesses some of the weaknesses in current practice involving victims of the North Korean state's excesses, before drawing on data I and other organisations gathered from North Korean escapees<sup>1</sup> to better understand what stakeholders pursuing "localised" or "bottom-up" transitional justice should consider in this context. The article then provides some recommendations for how NGOs might develop and pilot new approaches to planning for a transitional justice process for North Korea when the opportunity arises. This research also aims to contribute to the relatively understudied question of NGO engagement in transitional justice processes (Gready & Robins, 2017, p. 956). It considers the NGO landscape in South Korea from my perspective having worked inside an organisation specifically on North Korean human rights issues while engaging with a number of external organisations focused on accountability mechanisms.<sup>2</sup>

### **Transitional Justice for North Korea**

Given the existence of various forms of oppression and mass atrocity in many parts of the world, an abundance of precedent-giving examples exists to help imagine how transitional justice might be applied to the situation in North Korea. Burgeoning knowledge about distinctions between the remedies best suited to "paradigmatic" (liberal democracy building) and "non-paradigmatic" (post-conflict, peacebuilding) transitions (Sharp, 2015), provides guidance for governments, civil society and international stakeholders to tailor approaches to helping newly transitioning nations recover. In addition, precedent also exists where transitional justice mechanisms have been set in motion before an actual transition has taken place, as in Columbia in 2011 (Summers, 2012). For its part, South Korea is no stranger to transitional justice mechanisms, having run, albeit unsatisfactorily in some respects, a Truth and Reconciliation Commission in the mid-2000s.<sup>3</sup>

Civil society groups often play key roles in establishing and supporting transitional justice processes: the church and human rights NGOs in both Chile and Guatemala played a pivotal role in gathering evidence of abuses while violence there was ongoing (Rothenberg, 2012). NGOs including the Documentation Center for Cambodia worked tirelessly to bring about the establishment of the Extraordinary Chambers of the Courts of Cambodia in 2003, to prosecute the crimes of the Khmer Rouge regime over two decades after it was ousted from power. NGOs in the Philippines are working now to gather evidence and lobby internationally to hold President Rodrigo Duterte accountable when possible for the many civilian killings that have resulted from his so-called "war on drugs". As a result, despite its relatively short history as a field of research and practice, and notwithstanding questions about its long-term efficacy (Kim

& Sikkink, 2012; McCargo, 2015), transitional justice offers much to ponder when it comes to thinking about how to approach the long-running situation in North Korea.

Scholars have noted a variety of important considerations in the recent research on transitional justice for North Korea, including the impact of the type of transition that could unfold; the challenge of defining the scope of human rights abuses and the limits on who might face prosecution; the problem of building national consensus for transitional justice; and the many competing logistical priorities associated with re-building a nation-state (Baek & Teitel, 2015; Burt, 2017; Hong, 2010). In addition to these concerns, Baek, Collins and Kim issue an accurate warning regarding the complications presented by, “the history of the (inter-Korean) division and competing ideologies between the two Koreas... (and) persisting social conflict” (Baek et. al., 2015, p. 238), which could cripple a recovery process. As important as these observations are, a weakness in the existing analysis has been a tendency to focus on the top-down implementation of mechanisms by a new national government or by international actors. Moreover, although the literature notes the need for a victim-centred perspective of transitional justice (Baek, Collins & Kim, 2015, p. 236; Burt, 2017, p. 8) there is little meaningful discussion around what this would look like in practice.

The efforts of organisations working on North Korean human rights abuses have mirrored this emphasis on top-down, elite-driven mechanisms. Work has been channelled towards gathering incident data from former residents of North Korea in the hope this data might be used to form legal cases against perpetrators. The activities of NGOs in South Korea working alongside the UN can be seen as in line with the common practice worldwide of “responding to gross violations through a predominantly legal lens, developing victims for collecting victim and witness testimony”, while paying less attention to the broader impact on and needs of affected communities (Robins & Wilson, 2015, p. 224). Critics of the dominance of legalism in transitional justice argue that this can lead to knowledge production “in a limited fashion on others’ terms” (Robins & Wilson, 2015, p. 224). As helpful as progress in evidence-gathering and legal analysis has been in a practical sense, criminal justice is only “a symbolic first stage in addressing more restorative and community-centred considerations” (Findlay, 2009, p. 193). Despite working with many survivors of the North Korean regime’s abuses on a daily basis, concerned organisations have yet to consider thoroughly what it actually means to pursue a victim-centred approach to preparations for a transitional justice process, in terms of how such an approach might re-shape research methods, the design of outreach programmes, and engagement of victims’ groups.

### **What is a victim-centred approach?**

The popular claim of transitional justice to be ‘victim centred’ has come under intense scrutiny in recent years, as debate around the duty of states responding to gross human rights violations has shifted from the duty to prosecute to a more integrated approach (Kamatali, 2007, p. 275). This has resulted from the problematisation of “top down” transitional justice, which has led to an increased scepticism about some of the grander claims regarding victim empowerment (Findlay, 2009; McEvoy & McConnachie, 2012, p. 527). McEvoy and McConnachie argue:

... despite the rhetoric, victims are (to varying degrees) instrumentalised in the pursuit of larger political and social goals such as reinforcing the rule of law, deterring future offenders, getting to the “truth” of past violence and, of course, the pragmatic deal-making that is inherent in making peace. (2012, p. 528)

Scholars note a distinction between retributive justice, which constructs victims as “passive objects” and restorative justice, which constructs them as “active agents” (Garbett, 2016, p. 42). Yet this does not mean that victim participation in the latter context is truly “active”. Rather, victims are often deployed as part of the self-legitimation of transitional justice, rather than as true agents, empowered to shape the process (McEvoy & McConnachie, 2013, p. 490). This is because transitional justice processes are most often “created by elites... and supported by an international community remote from the context and from indigenous understandings” (Robins, 2011, p. 76). Why does this matter, and what is lost from a process that is not adequately victim-centred?

Research from a number of settings notes that victims in many contexts “know little of rights and instead articulate needs” (Robins, 2011, p. 77). The privileging of an externally imposed discourse around transitional justice can leave urgent needs unmet, by prioritising civil and political rights over social, economic and cultural rights (Robins, 2011, p. 78). In addition, the re-traumatisation, or the failure to achieve any so-called “therapeutic effect”, are consequences associated with truth-telling or criminal justice processes that have been imposed without due care for victim priorities (Robins, 2012). Elite-driven processes can also lead to victim frustration for failing to deliver on promises, to meet the inherent diversity of needs present in the victim experience, or when processes place a disproportionate focus on legitimising the liberal state (Robins, 2017, pp. 43–44). Moreover, as Doak (2011, p. 11) demonstrates, there are important distinctions between the healing of the individual and that of wider society, necessitating different approaches to address individual and collective experiences.

Two solutions emerge from recent literature critiquing the failure to achieve an effective level of victim-centred-ness in transitional justice processes: developing an understanding of victim constituencies, alongside the empowerment of these constituencies to participate actively and with determining powers in the design and implementation of a transitional justice process. Robins (2011, p. 76) writes:

To privilege a victim perspective, studies are required that engage with those who have experienced violations, understanding the meaning the populations give to such events and the symbolic and social worlds they occupy. To root a response to gross violations in the experience of those most affected demands an empirical and an ethnographic approach.

The burgeoning research on victim engagement and empowerment in planning for transitional justice measures cites many advantages to be gained from this approach, distinguishing between “rights” versus “needs” of victims, where the latter are “a product of culture and context and are highly local in nature” (Robins, 2011, p. 77). In what follows, I look at different aspects of primarily civil society, but also to some extent South Korean government and international (UN) engagement with North Koreans, as part of efforts to pursue an accountability-oriented agenda. Insights gained through several years working in a human rights NGO in Seoul, alongside data gathered over this time directly from the escapee community, are then used to evaluate current practices, with a view to looking at ways they could be improved to get closer to more victim-centred approaches.

### **Current victim engagement practices**

NGOs in South Korea focussed on North Korean human rights issues have shown greater determination than the South Korean government in working closely with the North Korean escapee community and using the information gathered from them to push for accountability for the North Korean regime. This was particularly evident after the passing of the North Korean

human rights act in 2016 by the South Korean National Assembly, when the provisions of the act either barely stuttered into action or never materialised at all. This was largely thanks to lack of institutional provision and a new government in 2017, which de-emphasised North Korean human rights issues in the interests of inter-Korean engagement. The 2016 act established a government-run Center for North Korean Human Rights Records under the Ministry of Unification (MOU); however, despite engaging in some data gathering, it is yet to publish any findings publicly (Cho, 2019). NGOs, by contrast, have a proven track-record of data-gathering on a wide range of themes for public dissemination and engagement with external institutions. These organisations have gathered data and reported on an increasingly diverse range of issues over the past two decades, including child rights, women's issues, overseas workers, the justice system, freedom of expression, health and food insecurity, and state-led cyber-attacks, among other themes (Gang & Hosaniak, 2018; Jun, LaFoy & Sohn, 2015; Lee, 2009; Park, 2016).

Beyond research and reporting, some human rights NGOs also run English-language lessons for escapees, summer camps for youth, counselling services and education and training opportunities to help equip North Koreans for life in South Korea. Drawing on years of experience working with escapees, a number of groups worked effectively in consortium to lobby for the establishment of the UN COI and cooperated with the Commissioners to supply valuable data and witnesses. They have since partnered with the UN human rights office in Seoul and with other organisations to share information, inform UN procedures, cooperatively gather evidence and continue their other support activities for North Koreans.

It is worth noting that most of this work is led by South Koreans, not escapees themselves. The North Korean human rights movement began in the mid-1990s, shortly after South Korea's democratisation, at a time when there were very few North Koreans in the South at all. Most organisations were therefore founded by South Koreans, who have maintained the much of the leadership since. Moreover, their activities, while certainly impactful in many respects, are largely typical of what Gready and Robins (2017, p. 962) term "old civil society", whereby interactions between civil society and transitional justice (or in the Korean case, preliminary work to support a future transitional justice process) are conceived "through the prism of institutional mechanisms, rather than seeing transitional justice as a set of discourses and a form of politics". The current methods of NGO engagement with the accountability agenda are focussed primarily on transnational advocacy and global human rights "norm diffusion". Tsai and Robins (2018, p. 33) write:

This is... underpinned by coalitions between national and external actors, and the understanding that local actors... when faced with a hostile, unresponsive state, look outwards to supportive NGOs, states, inter-governmental agencies and other actors for support and to put pressure on the state. Among the criticisms of transnational advocacy are that it... privileges elite advocacy, external allies and norms, reflecting a top-down theory of change.

The result is a limit on independent action and research that adequately localises or contextualises understandings of responses to human rights abuses, as well as limited creation of spaces where alternative approaches to this field of work can be developed and tested (Gready & Robins, 2017, p. 962).

As a result, the empowerment aspect has been relatively neglected in terms of engagement with those victims of human rights abuses currently in the South. While North Korean escapees are invited to take part in NGO and government-run activities focussed on expediting and supporting their adjustment to life as South Korean citizens, there is little thought around an

active role for them in preparing for a transition in North Korea. NGOs also struggle to secure meaningful representation within their staff as a whole from the North Korean escapee community due to lack of interest, limited resources, lack of essential skills and training, as well as escapee fear of bringing harm on family members still residing in North Korea. While some North Koreans do travel to give testimonies abroad, a tendency has developed to conduct inter-organisational meetings with international organisations in Seoul and abroad in English, and to employ and send English-speaking members of staff to meetings, trainings, and advocacy activities.

In sum, although North Korean human rights NGOs in South Korea have made great inroads in gathering the data that has supported the turn towards pursuing accountability for human rights abuses and mobilised greater attention to the problem than in the past, there are evidently a number of barriers to the potential for victims to help initiate, or to assist in the design and implementation of a transitional justice process for North Korea. As a result, the treatment experienced by North Koreans in South Korea emulates the critique levelled by McEvoy about transitional justice institutions tending “to see victims or violence-affected communities as constituencies which must be managed rather than citizens to whom they must be accountable” (McEvoy, 2007, p. 424). At their worst, these practices may also be susceptible to the strong critique levelled by Madlingozi (2010) and others, who see human rights “professionals” claiming to act on behalf of victims as “transitional justice entrepreneurs”, “stealing the pain of others” by speaking *for* them, in what could be interpreted as “an act of further violence and dispossession” (Alcoff, 1991; Madlingozi, 2010, pp. 208–11; Razack, 2007).

### **Engaging the victim constituency**

Moving beyond the established modes of engagement described above requires new forms of inquiry and action with those who have come from North Korea. At this time, little research has been conducted into manifestations of victimhood within the North Korean escapee community, particularly as it may shape their thoughts regarding future remedies for North Korean society. Arguably, such questions are not a high priority while the inter-Korean division persists and regime change or opening in North Korea appears a remote possibility. However, tailoring transitional justice mechanisms and processes that support the priorities of those most affected requires gathering evidence that paints as accurate a picture as possible of the conditions of the local context (Pham & Vinck, 2007). If such work can be initiated or piloted ahead of time in the Korean context, it may support swifter implementation of targeted consultations in the future. Existing research in this field globally provides valuable guidelines for organisations wishing to gain a better understanding of the needs of local communities, as well as victim perceptions of transitional justice (Levin, 2011; “The Day After”, 2014; Vinck, Pham, Baldo, & Shigekane, 2006; Williams, Bernath, Boravin, & Kum, 2018).<sup>4</sup> In this section, I look at some preliminary steps taken via survey questionnaires and interviews with North Korean escapees to gain an understanding of North Korean escapee perceptions of victimhood regarding human rights abuses, alongside possible remedies.

### *Methodological considerations*

Methodologically, working with a community of escapees, as opposed to being able to access the resident population in North Korea directly, does raise some issues of representation. Over 75 per cent of North Koreans settled in South Korea are from two northern provinces, Ryanggang and North Hamgyeong, which account for only 12 per cent of the North Korean population (Song & Denney, 2019, p. 453). Additionally, the proportion of female escapees in the South is 72 per cent at present (Ministry of Unification, 2019). There are also challenges to getting access to North Korean escapees by means other than referral from existing contacts,



as the government restricts access to newly arrived escapees to only a few organisations until they are released from the secure settlement centre (*Hanawon*). Additionally, many North Korean escapees report feeling suspicious of one another, due to social relationships and forms of social control from North Korea being “transplanted” to the escapee community in the South (Song & Bell, 2019, p. 166). Perhaps, therefore, aside from certain churches and small alternative schools for escapee youth, there are limited organised escapee social groups that NGOs might access to reach out to potential participants for research or other activities. In order to secure research participation, organisations often pay a financial reward of between \$30 and \$300 to interviewees, designed to compensate for the cost of travel and the inconvenience of perhaps having to miss work shifts.<sup>1</sup> Yet some observers note this could provide “a perverse incentive to exaggerate (and possibly fabricate) information” (Song & Denney, 2019, p. 453). The expectation of payment also presents an additional barrier to access for organisations that cannot or will not pay for information.

Even though research conducted within the escapee community must come with the important caveat that findings cannot be considered representative of the experiences and opinions of the North Korean population as a whole (Kretchun & Kim, 2012, p. 7), the long-running and varied work done by many organisations with this community has established both survey and interview work as valid tools of inquiry into the experiences and views of the North Korean escapee population (Han, 2018; B.Y. Kim, 2017; Kretchun & Kim, 2012). Moreover, Song and Denney (2019, p. 453) note that “empowering the voices of those who, because of their former positions in the DPRK, can speak with some authority is just and warranted”. It was on this basis that I conducted a minor survey of North Korean escapees who were concurrently participating in human rights monitoring work at the Transitional Justice Working Group in Seoul. This was done using a questionnaire administered to 450 people between 2015 and 2019. In mid-2018, in-depth interviews were conducted with 10 people,<sup>5</sup> focussed on issues of victimhood, transitional justice and potential remedies for human rights abuses in a transitioning North Korea (see Appendix).<sup>6</sup> The full findings of this survey are published in report form elsewhere (Son, 2019), but I have incorporated selected findings below.

### *Victimisation and victimhood*

Defining “victim” as a category attached to harm is usually the first task in identifying transitional-justice mechanisms but doing so is far from straightforward. Social science research has sought to address the common question: “Why do *these* victims, rather than others, come to be recognised, by whom and for what purpose(s)?” (Jacoby, 2015, p. 512). Victimhood is inherently political, “a form of collective identity”, and a “complicated and contested phenomenon, fractured and plural and never complete” (Jacoby, 2015, pp. 513–516). There is a consequent need to explore the choices behind victimhood to learn more about the relationship between victimhood and struggles for recognition, unity and emancipation (Jacoby, 2015, p. 513). With these considerations in mind, the research conducted with escapees found three themes: A high proportion of participants choosing to identify as victims; a wide variety of bases for this identification; and a tendency for victim identification to develop retrospectively.

First, 84.6 per cent of respondents surveyed chose to identify themselves as “victims” of the North Korean regime. This was despite a smaller percentage of participants reporting personal experiences of physical harm (47.7 per cent), or reporting experience of what the research defined as “wider harm” (72.9 per cent): personal physical harm in addition to experience of

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<sup>1</sup> All monetary totals refer to US\$ unless otherwise specified.

the starvation or murder by the authorities of a family member, forced repatriation to North Korea, arrest or detention. This suggested that victimhood is derived from a wider range of factors than the experiences of physical violence or wider harm to the individual as presented in the questionnaire (see Table 1).

**Table 1: Perceptions of victimhood and personal experience of violence by the North Korean authorities**

Question	Yes		No		Total
	Number	% of total	Number	% of total	
Do you consider yourself a victim of the North Korean regime?	159	84.6%	29	15.4%	188
Personal experience of physical violence perpetrated by the North Korean authorities, in North Korea	95	47.7%	104	52.3%	199
Personal experience of wider harm, perpetrated by the North Korean authorities, in North Korea (experience of physical violence above, plus starvation or murder of a close family member, forced repatriation to North Korea, arrest or detention)	154	72.9%	54	27.1%	199

To then investigate how victimhood may have been interpreted by the questionnaire respondents, participants in the in-depth interviews were asked to explain the source of this identification. For several it was grounded in a very obvious experience of abuse such as being sent to a political prison camp following repatriation to North Korea from China, or a serious physical assault by the North Korean authorities. For others it was not due to direct, personal violations of bodily integrity, but rather to situations such as the imprisonment of an adult son for attempting to escape the country, or the very existence of the inter-Korean division, which prevents freedom of movement to visit family remaining in North Korea. Several interviewees raised the North Korean social classification system, known as *songbun*, which divides citizens into “loyal”, “wavering” and “hostile” classes, and attached their victimhood to the lifelong, unfair treatment they experienced as a result of being of “low” *songbun*, “no matter how hard (they) worked for the system”. This system has been described as “a cruel and persistent reality for the millions who must experience on a daily basis” (Collins, 2012, p. 1). Low *songbun* is typically passed down the generations, as was the case for one interviewee who reported persistent discrimination while in North Korea on account of his father being an ethnic Korean who was born in China. While a certain amount is known about deeply embedded structural discrimination, defined and maintained by the *songbun* system, further research is needed into what extent its effects may persist following a fundamental political transformation in North Korea, as well as the sorts of remedies that might be applied to dismantle it and end the dehumanising impact it has on many.

Another common theme that arose in the interviews was the retrospective nature of victim identification connected to rights violations. One interviewee who had suffered an unprovoked attack from a police officer said that at the time of the assault she had felt utterly powerless, and that it was only when she came to South Korea that she had realised her “importance” and “value”. An interviewee who had been repatriated from China stated that at the time she believed she had deserved to be “beaten up” by the authorities, for having “betrayed” her country. It was only after time interacting with human rights organisations in South Korea that

she came to see herself as having rights that had been violated. Several of the female interviewees described feeling burdened by ongoing health problems resulting from physical harm experienced in North Korea, which have a considerable impact on daily life today. One male interviewee discussed his intention to join a petition of victims to the UN regarding political prisoners in the hope that his son might be set free from prison if sufficient international pressure could be applied.

These indications that victim identification is something that can emerge retrospectively, and for varying reasons, and/or in response to specific opportunities to be heard, highlights a significant burden on human rights organisations, both in South Korea and abroad, to think carefully about defining categories of victimhood, as well as the labelling associated with this because:

... the right to define a victim (and be so defined) is an equally salient form of power as it grants legitimacy to some groups and not others. From this act of labelling flows a host of material and other benefits bestowed on recognised victims, from which those who fail to get recognised are deprived (Jacoby, 2015, p. 516).

Robins also cautions that identities constructed via “public recognition selection processes” can deny the victim active agency over their own identity (Robins, 2017, pp. 52–53). This can manifest when NGOs, the state and other institutional actors present themselves as “saviours” or “protectors” of a disempowered victim constituency (Robins, 2017, p. 53). A preferable goal to achieve social transformation is “that change is made by empowering victims themselves, rather than others acting on their behalf” (Robins, 2017, p. 55). Many North Korean escapees have already sought to present their own narrative of their victimisation to the world, via TED Talks, television appearances, or through the publication of memoirs. Several of those I interviewed, while describing their own sense of victimhood, expressed scepticism about the truth of some stories about violence and suffering told by escapees in the media, saying they themselves failed to connect with narratives they felt were sometimes “exaggerated”.

Findlay (2009, p. 196) notes that further challenges to defining victimhood also emerge from the ways communities can be resistant to a focus on highlighting victimhood based on individually-held grievances where “individual rights are subservient to communitarian concerns of social harmony”. Scarlatoiu addresses this concern when he raises the potential impact of *jeong* (compassion) and *chaemyon* (face) on a future transitional justice process, which could cause a desire to avoid extended international attention for the crimes of North Korean perpetrators. These socio-cultural features of Korean society could impact the formation of national consensus around airing what could be perceived as collective “dirty laundry” (Scarlatoiu, 2015, p. 102). Gender-related concerns should also be noted here. Observers emphasise it is women under the North Korean regime who endure “disproportionate suffering” and who have historically been less likely to testify about violations experienced for fear of social discrimination, shame, or even a lack of awareness that an experience could be considered a violation of their rights (Burt, 2017, pp. 8–9). Recent efforts to address this issue have been made by several organisations reporting on discrimination against women in North Korea (An & Sim, 2018; Gang & Hosaniak, 2018). In sum, victimisation and the types of victimhood identity it can confer onto both the individual and affected groups are issues which need greater attention in this context, given the complexity of designing and applying measures that are considered effective in addressing the needs arising from that victimisation.

### *Proposing transitional justice remedies*

In addition to framing and defining victimhood, determining appropriate measures to formally address the various forms of victimisation also comes with many challenges, and typically, “victims are defined by their experience and its codification in law” (Robins & Wilson, 2015, p. 224). To date, some of the questions that have been debated in the search for remedies include: Where is the line between state and non-state violence drawn? Where has North Korea neglected its responsibility to protect? Are there grounds for genocide having been committed? Perpetrator categories are no less easy to define. McEvoy and McConnachie (2012) note that “the complex network of human relations” means that it is impossible to reduce to a binary description of victims and perpetrators. Rather, “the ‘innocent’ victim is placed at the apex of a hierarchy of victimhood and becomes a symbol around which contested notions of past violence and suffering are constructed and reproduced” (McEvoy and McConnachie, 2012, p. 532). Interviewees showed awareness of this challenge, stating, for example, “we should prosecute depending on the seriousness of the crime. Some officials did things because they were forced”. Additionally, transitional justice mechanisms often place disproportionate focus on addressing physical violence while largely excluding “victims of the structural violence of social and economic rights violations from its purview, understanding justice as linked almost exclusively to violations of bodily integrity” (Robins, 2017, p. 52). Lack of basic needs is so widespread that one of the first tasks for a transitioning government should be targeted assessment on the ground, with the input of key agencies with established knowledge of the North Korean resource context. Such needs should not come second to institutional mechanisms focussed on accountability. Moreover, national-level processes addressing immediate needs make up only a small part of a complex eco-system of social, economic and political change that affect people’s lives in transitions (Tsai & Robins, 2018, p. 34).

Discussing potential remedies with North Korean escapees in the context of interview and survey work is difficult due simply to an inherent lack of knowledge or experience with transitional justice mechanisms. While the questionnaire I administered found positive approval of the most commonly deployed transitional justice mechanisms, the idea of victim ownership over such mechanisms emerged in the interviews as more desirable in principle than in practice. Of the most common transitional justice mechanisms, truth-telling received the most positive responses, by a small margin (see Table 2).

**Table 2: Escapee perspectives on the importance of implementing common transitional justice mechanisms**

Mechanism	Very important		Quite important		Not very important		Not at all important		Total
	No.	%	No.	%	No.	%	No.	%	
Financial compensation for victims of human rights abuses	225	70.1	91	28.3	5	1.6	0	0	321
Prosecuting perpetrators of human rights abuses	241	75.8	72	22.6	4	1.3	1	0.3	318
Perpetrators make official apologies	244	76.9	64	20.2	4	1.3	5	1.6	317
Non-judicial truth-telling mechanism	263	82.9	49	15.5	5	1.6	0	0	317

Regarding the prosecution of perpetrators, many participants stated that perpetrators of human rights abuses should be prosecuted in formal judicial settings, while non-punitive responses, such as giving amnesties and allowing perpetrators to reintegrate into society were much less popular options. Research by the Database Center for North Korean Human Rights has also found a strong preference among North Koreans for prosecuting perpetrators through criminal justice processes (Lim & Kim, 2018, pp. 79–80). However, these options all remain hypothetical at present: no investigations into human rights crimes have been carried out from within North Korea, and much remains unknown about how or in what form a transition in North Korea may take place, not to mention whether former perpetrators may be involved as leaders within a transition, making their potential prosecution a contentious issue. Yet further research that begins with the varying needs arising from experiences of victimisation provides the potential to explore more meaningfully how possible remedies might best match these needs, for the long-term health of society.

The most challenging question to discuss with North Korean escapees was the question of victims leading and designing a transitional justice process. Of those surveyed in the questionnaire, 97.4 per cent felt that it was important for victims to have an active leadership role on this front. However, during the in-depth interviews, participants expressed a number of concerns around how this might be achieved. While some felt that a transition in the form of inter-Korean unification, for example, would create an environment that would allow people to speak freely, others indicated a fear of what would happen to them or their families post-unification/transition, should they be seen as traitors by those who remain in the North. Taking a leadership role was seen as making them potential targets of additional vilification. This connects with the questionnaire finding that over 84 per cent of the research participants expressed a fear of participating in human rights work focussed on North Korea, with the primary reason for this being concern for the safety of family members still in North Korea. Interviewees also expressed some uncertainty regarding North Korean victims' groups leading the design and implementation of transitional justice mechanisms, linking this uncertainty to a perceived lack of neutrality: "The government should have final decision-making power. If the victims lead decisions, they could be biased because of their personal feelings". This preference for looking to formal political leadership for decision-making power has emerged in other studies with North Korean escapees (Song & Denney, 2019, p. 459), and is another important factor for stakeholders to consider when conducting outreach with North Koreans.

The insights described above merely touch on some of the questions that should inform the type of information sought from North Koreans on their country of origin, their experiences of abuses, as well as how their preferences might shape activities to better engage with and empower them as time goes by. Clearly, broader, more comprehensive investigation is needed in each of these areas, but even on the basis of the considerations and information just presented, a number of recommendations for ongoing NGO work are made in the final section of this article.

### **Recommendations for civil society**

Having spent time working with NGOs in South Korea, I am aware that there are a number of structural challenges that must not be overlooked when it comes to extending or innovating beyond the current format and scope of work being done with North Korean escapees to support the accountability agenda. These are worth addressing first, in order to contextualise the recommendations that follow.

The North Korean human rights movement's continuation of activities that privilege "top-down" over "bottom-up" change, is significantly driven by the financial costs of change. The capacity to carry out new, long-term research and documentation projects is constrained by modest domestic funding and limited public interest. This in part because the South Korean government, regardless of its ideological orientation, has long taken a relatively cautious approach to North Korean human rights issues. Over the past two decades, governing power has swung back and forth between progressive governments who favour engagement with North Korea (which maintain relative silence on North Korean human rights issues), and conservative governments more critical on human rights but with typically poor relations with the North Korean leadership. Yet neither side has ever acted in a way that takes a strong stance on North Korean human rights. As I have discussed elsewhere (Son, 2018), reasons for this include a desire to keep inter-Korean unification aspirations alive as an important national goal, self-awareness of South Korea's own struggles with human rights over much of its history, and the need to keep dialogue and cooperation with North Korea open at certain times. As South Korean government caution on North Korean human rights is likely connected to limited public knowledge of the problem, the lack of public interest-driven donations forces NGOs in this field to rely on limited-term, project-based funding, primarily from abroad. Such funding rarely provides for crucial capacity needs that would support significant innovation, such as sufficient provision for digital security expertise and infrastructure, or expert training for managers, researchers and interviewers in new methods of human rights practice or organisational strategy. Nor are salaries sufficient to attract qualified experts in many of these fields. NGOs are thus not well-equipped to innovate and take advantage of new methods and technologies that might improve their efforts.

This does not mean that there is no way to look into ways to pilot programmes, assess methods and implement strategies that can be actioned at the earliest stage of transition process. To do this, first, greater attention needs to be paid to breaking with established thinking on inter-Korean unification and assumptions about what should happen in North Korea from an overwhelmingly elite-driven, South Korean perspective. Rather, resources should be invested in more rigorous research into the experiences of other contexts with transitional justice and its potential application to Korea. Localising existing transitional justice models demands an intimate understanding of the way those models have been adapted elsewhere. In the current situation, South Korean NGOs are best placed to do such work, particularly given the growing interest in the North Korean situation from scholars and transitional justice practitioners internationally, who carry much expertise of value. There is a particular need for more research which "challenges a vision of the transitional citizen as a passive recipient of new legal or political programs and points to the emergence of an alternative understanding of justice and democracy through public outreach programs" (Simic & Volcic, 2013, p. 4). How might NGOs begin preparing now for future national consultations in North Korea, of a kind which gets to the heart of local community and individual needs? Field-level engagement that looks at transitional justice among people than among countries and institutions is essential to its success (David, 2017, p. 153). Related to this, civil society and government bodies in South Korea would benefit from greater collaboration with social science research on North Korea that provides information on social, cultural, political and other structural dynamics that inform knowledge on the structures that shape violence, oppression, and victimhood, as well as the barriers and opportunities to addressing these things in the future.

Second, there is a need to continually update research methodologies in human rights documentation on North Korea, particularly that undertaken by NGOs. This starts with basic items such as ensuring robust digital security infrastructure, to give North Korean research

participants a sense of assurance that the information they share is safe and unlikely to fall into the wrong hands, as occurred in December 2018 at a database at a Ministry of Unification-run resettlement centre in Gumi (Shin, 2018). It is important also that civil society think about how variations in the application of the data they collect demand innovation in approaches to data collection methodology. While some NGOs have experimented with focus-group, activity-centred consultations with North Korean escapees, these are far from common practice, and the 1:1 interview, either in person or by phone, remains the prominent method of information-gathering. As Song and Denney (2019) have shown in their focus-group work conducted with North Korean refugees in the United Kingdom, there is much that can be learned from exploring alternative means of consulting with, and understanding the perspectives and needs of the North Korean people who have left the country. There is a wealth of international expertise to tap into to advise on such matters, and NGOs would do well to consult widely on this front as they review their methodological processes.

Third, and perhaps most crucially, there is the larger question of piloting new approaches to outreach, victim empowerment and planning and designing transitional justice mechanisms for implementation when the time is right. NGOs can play a key role in helping victims and communities gain knowledge on key issues and learn how to negotiate and compromise in these spaces (Tsai & Robins, 2018, p. 13). Although North Korean escapees have been cited by official voices in South Korea as the vanguard of inter-Korean unification for decades, as described above, outreach and training to support preparedness has been limited to activities such as unification camps for youth and counselling programmes. The substantive content of such activities is often situated in ethno-nationalistic discourse about the North–South filial relationship and the economic potential of a unified Korea, in a largely top-down, South Korea-led vision of a future transition. By contrast, providing capacity and support for North Korean escapee-driven initiatives for thinking about the future can help connect needs arising from victimisation to the available remedies, thereby making it more likely that strategies respond to local challenges (Tsai & Robins, 2018, p. 9).

Educational outreach can also include efforts to manage expectations about what can be achieved by mechanisms such as criminal justice proceedings, especially given the current advocacy focus on criminal accountability. Numerous studies have found that legal processes often set expectations among ordinary people unreasonably high, when in fact prosecutions of crimes against humanity “always prove evidentially difficult” and convictions are not always possible (Nickson & Braithwaite, 2014, p. 446). The Citizens’ Alliance for North Korean Human Rights has pioneered study trips for young North Korean escapees to Europe to view first-hand transitional justice processes in action, across a range of mechanisms from exhumations of victims’ graves, to the creation of archives. Programmes such as this could be expanded, empowering North Korean escapees to understand the scope of remedies that are possible, and more importantly, to see a potential role for themselves within such a process.

## **Conclusion**

This article has made a case for exploring what it means to apply a victim-centred approach to ongoing documentation of human rights abuses in North Korea, and to planning for a future transitional justice process to deal with the legacy of atrocities. Through discussion of the literature around victim-centred transitional justice globally, it was possible to identify limitations in the current approach to working with victims of the North Korean regime, as well as in current research and methodologies viewed through a criminal justice-oriented lens. A thorough examination of current practice within both South Korean government-led and civil society work in the pursuit of accountability provided useful information on the state of practice

in the field. The presentation of selected research findings gathered from consultations with members of the North Korean escapee community in South Korea provided some initial reference points for reflection, situated in the broader scholarship on victims and possible modes of redress in a transitional justice context. The discussion emphasised the importance of parsing out where inconsistencies may lie between the actual interests and needs of victims and witnesses, and the needs currently being articulated by NGOs, the UN and concerned state governments.

While there are significant challenges to fostering capacity and greater engagement of North Korean escapees in efforts to assess conditions and plan for the future, North Korean human rights-focussed NGOs can and should be exploring new modes of engagement now, to develop, test and, where appropriate, apply innovative modes of engagement and action, along with making policy recommendations to institutions with an existing agenda towards North Korea. NGOs can provide an important counterbalance to the traditional “institutional approach” which “necessarily restricts the interest of a transitional justice process to the minority of victims whose cases will be brought before some formal mechanism... remote from the communities they claim to serve” (Robins, 2017, p. 45). NGOs have a range of opportunities to advocate for or within a transitional justice process, even prior to its establishment, to mobilise self-representation for stakeholders, test new forms of organisation and create spaces where alternative mechanisms can be modelled (Gready & Robins, 2017, p. 960). Although the current situation on the Korean peninsula does not allow for the full expression of these options as in the context of a transitioning North (and South) Korea, there are certainly opportunities to begin testing and practicing adapted forms of the above modes of activity in current NGO agendas.

### **Acknowledgements:**

This work was supported by the UniKorea Foundation.

## **Appendix**

### **In-depth interview participants**

Interviewee	Gender	Age	Escape year from North Korea	Arrival year in South Korea	Occupation in North Korea
1	M	60s	2015	2015	Office worker
2	M	20s	2010	2010	None
3	M	60s	2005	2006	Miner
4	F	40s	2004	2013	Factory worker
5	M	40s	1997	1998	Soldier
6	F	50s	2010	2017	Postal worker
7	F	40s	2009	2009	Party secretary
8	F	60s	2000	2003	Community group leader
9	F	80s	2006	2010	Elementary school teacher
10	F	60s	2013	2014	Doctor



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<sup>1</sup> The number of North Korean escapees who have come to South Korea currently stands at 32,150 (Ministry of Unification, 2019). North Korean escapees are also known by other terms in English, including defectors, refugees and migrants.

<sup>2</sup> The views expressed in this article are my own and are not intended to represent the views of the Transitional Justice Working Group, where the survey and interviews were conducted.

<sup>3</sup> The Truth and Reconciliation Commission was mandated to investigate incidents regarding human rights abuses, violence, and massacres that occurred from the period of Japanese colonial rule of the Korean Peninsula (1910–1945) to the time of South Korea's authoritarian regimes, the last of which ended in the late 1980s.

<sup>4</sup> The International Centre for Transitional Justice (ICTJ) has led efforts to consult with local populations and the International Coalition of Sites of Conscience has published a guide for practitioners (Robins, 2009, p. 320; Tsai & Robins, 2018).

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<sup>5</sup> Interviews were conducted by the author (non-ethnic-Korean), with the assistance of a female South Korean researcher, in Korean.

<sup>6</sup> Survey participants were paid \$45 for their participation in completing the questionnaire prior to participating in an interview for a separate project. The in-depth interview participants (2018) were selected to ensure variation in gender, occupation while in North Korea, the length of time since escape, and their experience of violence while in North Korea. Interviewees came from the pool of questionnaire respondents and received an additional \$45 for attending the interview.